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November 6, 2007

BY HAND DELIVERY

Honorable Ross Johnson, Chairman  
Commissioner Ray Remy  
Commissioner Eugene Huguenin  
Commissioner Bob Leidigh  
Commissioner Tim Hodson  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Re: November 14, 2007 Meeting – Agenda Item 14

Dear Chairman Johnson & Commissioners:

The following comments are submitted in opposition to the staff draft of Regulation 18530.31, Agenda Item 14 on the November 14, 2007 meeting agenda. Unfortunately, I will be out of state on that date, having made unchangeable travel plans before the meeting date was changed from November 8 to November 14.

At the end of this letter, I include some suggested language changes that might improve the draft.

Shortly after the August 2007 meeting, your staff convened a meeting between a number of interested parties, staff and at least one (but not three) commissioners. The important elements of the current staff draft of this proposed regulation did not “surface” at that meeting, so the staff draft – in particular, subdivision (e) – was first noticed with the publication of the agenda for this meeting on Friday, November 2nd. The following is a summary of the points I would make if I were to appear before the Commission

Language of the Proposed Regulation

1. Subdivision (b): The donor “intent” standard of subdivision (b) which contains the use of the words “clearly indicates,” is vague. This appears to require an “intent” that is less

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exacting than an “earmark.” The proposed change of “clearly indicates” to “earmarks” reflects more precision.

2. Subdivision (e): Recently, in response to Commissioner Leidigh’s concerns expressed at two Commission meetings, we had referred the staff to an FEC regulation that uses a 1/3rd test.

The 1/3rd test was suggested to deal with a problem that Commissioner Leidigh had raised early in this process. That problem concerned lavish prizes used as fundraising inducements (e.g., the Ferrari given as a raffle item.) However, the general 1/3rd formula in the proposed regulation (if that’s what it is) isn’t limited either to lavish prizes or to lavish fundraising events.

The draft change I suggest limits the application of the 1/3rd test to raffles and auction items consistent with Federal law.

### Suggested Alternate Language for Subdivisions (b), (e) and (f)

1. Subdivision (b): Substitute the following (underscored) for the existing language (stricken):

“(b) A donor makes a contribution for the purpose of making contributions to candidates for elective state office within the meaning of Government Code Section 85303 when a contribution is used as specified in subdivision (c) of this regulation after the donor “earmarks” ~~clearly indicates to the committee any of the following intentions: ....~~”

2. Subdivision (e): Substitute the following (underscored) for the existing language (stricken):

“(e) When fundraising proceeds are raised for ~~deposited into~~ a committee’s all-purpose bank account using a raffle or other fundraising devise which involves a prize, or an auction, ~~fundraising costs payable from the committee’s~~ the all-purpose bank account shall ~~pay be not less than~~ for the costs of the prize or auctioned item that exceed thirty three and one-third percent (33 1/3%) of the amount contributed. By way of example, if prizes or auction items cost \$1,000 and the fundraising proceeds are \$1,800, the all purpose bank account must pay \$400 toward the costs of the prize or auction item, i.e.,

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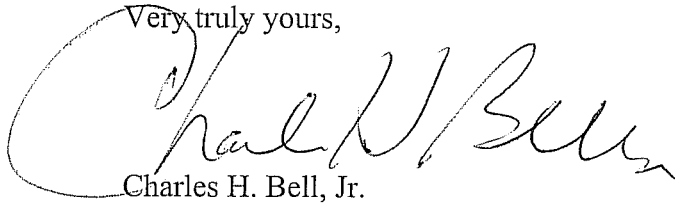
one third of the amount raised and the cost of the prize. However, if the fundraising event raised \$3,000 or more, then no amount would have to be paid from the all purpose account. If the prizes or auction items are donated, then the all purpose account must reimburse the restricted account for the fair market value of the donated prizes or auction items using the one-third formula. deposited, unless the committee can establish that the fundraising costs are lower by a reasonable accounting method supported by the committee's records.

3. Subdivision (f): Add the following new sub-subdivision (f)(3), as follows:

“(3) Costs attributable to raising funds for the all-purpose account except for those expenses required under subsection (e) above.

Thank you for the opportunity to submit written comments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles H. Bell, Jr.", written in dark ink. The signature is fluid and stylized, with a large initial "C" and "B".

Charles H. Bell, Jr.

Enclosure

POSSIBLE DRAFT AMENDMENTS TO 18530.31 --- November 2, 2007

Adopt 2 Cal. Code Regs. Section 18530.31 to read:

**§ 18530.31. Contributions to Committees and Political Parties.**

(a) Definitions: For the purposes of this regulation the following definitions apply:

(1) "Committee" means that term as defined in Government Code Section 82013(a), but does not include a candidate-controlled campaign committee or a small contributor committee subject to the limits of Government Code Sections 85301 or 85302.

(2) "Contribution" means a contribution of goods and services as well as a monetary contribution, pursuant to Government Code Section 82015.

(3) "All-purpose bank account" has the meaning given at 2 Cal. Code Regs. Section 18534(b).

(b) A donor makes a contribution for the purpose of making contributions to candidates for elective state office within the meaning of Government Code Section 85303 when a contribution is used as specified in subdivision (c) of this regulation after the donor earmarks ~~clearly indicates~~ ~~to the committee any of the following intentions:~~

(1) That a contribution be deposited into an all-purpose bank account.

(2) That a contribution be used to make contributions to candidates for elective state office.

(3) That a contribution be used to raise funds that will be used to make contributions to candidates for elective state office.

(c) A contribution is used for the purpose of making contributions to candidates for elective state office within the meaning of Government Code Section 85303 when the committee receiving the contribution does any of the following:

- (1) Deposits a monetary contribution into an all-purpose bank account.
- (2) Uses a non-monetary contribution to make contributions to candidates for elective state office.
- (3) Uses a contribution to raise funds that will be used to make contributions to candidates for elective state office.

(d) Neither the donor that makes nor the committee that receives a contribution violates Government Code Section 85303 if the contribution is not “used” as described in subdivision (c).

The following are examples of contributions that are not “used” as described in subdivision (c):

- (1) A contribution used to defray costs of establishing or administering a committee, including costs of committee fundraising when the proceeds are not used to make contributions to candidates for elective state office.
- (2) A contribution used to make a contribution to a campaign committee other than a candidate-controlled campaign committee for elective state office.
- (3) A contribution used to make a contribution to a committee primarily formed to support one or more ballot measures.
- (4) A contribution used to fund an independent expenditure or a communication described by Government Code Section 85310(a).

(e) When fundraising proceeds are raised for ~~deposited into~~ a committee’s all-purpose bank account using a raffle or other fundraising devise which involves a prize, or an auction, ~~fundraising costs payable from the committee’s~~ the all-purpose bank account shall ~~pay be not less than~~ for the costs of the prize or auctioned item that exceed thirty three and one-third percent (33 1/3%) of the amount contributed. By way of example, if prizes or auction items cost \$1,000 and the fundraising proceeds are \$1,800, the all purpose bank account must pay \$400 toward the

the prize or auction item, i.e., the difference between one third of the amount raised and the cost of the prize. However, if the fundraising event raised \$3,000 or more, then no amount would have to be paid from the all purpose account. If the prizes or auction items are donated, then the all purpose account must reimburse the restricted account for the fair market value of the donated prizes or auction items using the one-third formula. deposited., unless the committee can establish that the fundraising costs are lower by a reasonable accounting method supported by the committee's records.

(f) The following fundraising costs need not be paid from a committee's all-purpose bank account:

(1) Costs attributable to ensuring compliance with recordkeeping and contributor identification requirements of Title 9 of the Government Code, including identification of contributors whose contributions must be aggregated.

(2) Costs attributable to the dissemination of fundraising solicitations through regularly published membership newsletters or dues statements.

(3) Costs attributable to raising funds for the all-purpose account except for those expenses required under subsection (e) above.

(g) A committee subject to Government Code Section 85303 shall maintain for a period of five years documents and records, including accounts, bills, receipts and computations, sufficient to establish any fact pertinent to the requirements of subdivisions (b) through (g) ~~(h)~~ of this regulation.

NOTE: Authority: Section 83112, Government Code.

Reference: Sections 85301, 85302, 85303, 85310, 85312, Government Code.